No. 90-1126

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1991

BARBARA J. NORMAN, et al.,

Petitioners,

v.

DOROTHY REED, et al.,

Respondents.

On Writ Of Certiorari To The Supreme Court Of Illinois

BRIEF OF RESPONDENTS COOK COUNTY OFFICERS ELECTORAL BOARD, et al.

JACK O'MALLEY
State's Attorney of
Cook County, Illinois

BURTON STEPHEN ODELSON*
Special Assistant State's Attorney
of Cook County, Illinois
3318 West 95th Street
Evergreen Park, Illinois 60642
708/424-5678
*Counsel of Record for
Respondents Cook County
Officers Electoral Board, et al.

Of Counsel:
MATTHIAS WILLIAM DELORT
ODELSON & STEIN, LTD.
3318 West 95th Street
Evergreen Park, Illinois 60642
708/424-5678

August 7, 1991

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QUESTION PRESENTED

1. Does a requirement that a new party candidate running in a jurisdiction with over 1,200,000 registered voters obtain 25,000 signatures on his nominating petitions unconstitutionally burden the right to ballot access as guaranteed by the First and Fourteenth Amendments to the United States Constitution?

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INTRODUCTORY STATEMENT

This brief is submitted by the Cook County Officers Electoral Board and its members, David D. Orr, Jack O'Malley and Aurelia Pucinski (collectively the "Board"), as respondents in No. 90-1126. In large part, the Board supports the position of petitioners Barbara J. Norman, et al., (the "Harold Washington Party candidates") in No. 90-1126, for the reasons set forth in the Board's brief as petitioners in No. 90-1435.

This brief, however, presents the Board's response to the HWP's arguments on the one issue on which they

disagree: the exclusion of the HWP candidates for suburban Cook County commissioner.[1] This brief analyzes the suburban candidate issue under the assumption that the "complete slate" requirement is unconstitutional.

STATEMENT OF THE CASE

The Board adopts the Statement of the Case presented in its brief in No. 90-1435.

SUMMARY OF ARGUMENT

The Board agrees with the HWP candidates that the "complete slate" requirement, as interpreted by the Illinois Supreme Court, is constitutionally infirm. However, the Board disqualified the HWP suburban candidates simply because they failed to submit the requisite 25,000 suburban signatures.

[1] The brief of *amicus curiae* American Civil Liberties Union incorrectly asserts that the HWP no longer challenges the exclusion of the suburban candidates. Bf. of *amicus* ACLU at 10, n.8. However, the Harold Washington Party specifically argues that the Board (and the reviewing courts) improperly disqualified the HWP suburban Cook County commissioner candidates for failure to file a sufficient number of signatures. The record indicates that these particular candidates were disqualified on the independent ground that the 7,800 signatures submitted by those candidates was less than the 25,000 required by Illinois statute. See HWP Bf. at 9, 11, 13, 22, 26 and 27; Pet. Cert. in No. 90-1435 at 45a – 47a.

Political parties nominating candidates running for numerous offices in different jurisdictions may indeed have to present an aggregate number of signatures in excess of 25,000. However, Illinois law, as interpreted by the Board and affirmed by the Illinois Supreme Court, requires no individual new party candidate for office in a single jurisdiction to obtain more than 25,000 signatures. Thus, the 25,000 signature requirement, if viewed merely as a "cap", does not offend the constitutional rights at issue in *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 99 S.Ct. 983, 50 L.Ed.2d 230 (1979).

In considering this challenge to a state signature requirement, this Court must look to the totality of political circumstances to assess the character and magnitude of the burden the law places on the candidates and the state interests it advances. The record is devoid of evidence that the 25,000 requirement, considered alone, is either insurmountable or otherwise constitutionally suspect.

Illinois' flat signature requirement of 25,000 for new party candidates only applies in the vast Cook County jurisdictions containing millions of eligible voters. This 25,000 minimum compares favorably to similar requirements already approved by this Court. The mere 7,800 suburban signatures submitted by the HWP for its suburban candidates were neither sufficient to meet the statutory minimum nor were they sufficient to demonstrate a "modicum of support" in the community warranting ballot placement. Pet. Cert. in No. 90-1435 at 47a.

The HWP cannot sustain its burden of showing that its candidates for suburban Cook County commissioner

were constitutionally or statutorily entitled to a place on the November, 1990 ballot.

ARGUMENT

INTRODUCTION

Twenty-six persons ran as candidates of the Harold Washington Party for nine different offices in three separate voting jurisdictions. J.A. 4, 5. These candidates ran for all countywide offices and for the 17 positions on the Cook County Board of Commissioners: 10 elected from Chicago only and 7 from the suburbs.

Illinois law required these candidates to obtain signatures of voters within their voting jurisdictions in support of their candidacy. Ill.Ann.Stat. ch. 46, ¶ 10-1 *et seq.* (Smith-Hurd 1991 Supp.) The signed petitions presented by these candidates were of two distinct styles, which in turn included two overlapping sets of candidates: a "city/county" slate and a "suburban/county" slate. J.A. 4, 5. Voters signing these petitions requested both that county commissioner candidates for the voter's county board district (city or suburban district, as appropriate) and the entire countywide slate be placed on the ballot.

It is undisputed that the party presented only about 7,800 signatures for the suburban candidates. Pet. Cert. in No. 90-1435 at 46a. These signatures were all presented as part of the "suburban/county" slate. R. Vol. 2. Since the 7,800 total was considerably less than the 25,000 required

by statute[2], the Board sustained the objections to the suburban candidacies. Pet. Cert. in No. 90-1435 at 48a. The disqualification of these candidates was eventually upheld by the Illinois Supreme Court on other grounds. Pet. Cert. in No. 90-1435 at 2a.

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[2] Throughout this litigation, the parties have often asserted that 25,000 signatures are required for new parties running for statewide office, and that the statewide limit of 25,000 acts as a cap on the number needed for countywide candidates.

The statutory formula is actually a bit more complicated: new party candidates running for statewide office must obtain the lesser of (a) 1% of the number of voters who voted at the last statewide general election [which is always the general election held in November of the last even numbered year] or (b) 25,000. Ill.Ann.Stat. ch. 46, ¶ 10-2 (Smith-Hurd 1991 Supp.). However, the statewide voter turnout at November elections in even-numbered years has consistently exceeded 2,500,000 since at least 1960. Official Vote Cast at the General Election, November, 1990, Illinois State Board of Elections. Thus, the lesser figure of the two is always 25,000.

The number of signatures for new party candidates running in a county or a district thereof is the lesser of (a) 5% of the number of voters who voted at the last election for county offices [which is also the general election held in November of the last even-numbered year] or (b) the number of signatures required of new statewide parties which desired to run at the last preceding statewide general election [which would in turn have been based on the turnout at the November general election held four years earlier]. Ill.Ann.Stat. ch. 46, ¶ 10-2 (Smith-Hurd 1991 Supp.). Alternative (b), as shown above, is always 25,000.

A. THE CONSTITUTIONAL ISSUES GOVERNING THE PARTY'S CHALLENGE TO THE NUMERICAL SIGNATURE REQUIREMENT FOR SUBURBAN CANDIDATES ARE DISTINCT FROM THOSE GOVERNING THE "COMPLETE SLATE" REQUIREMENT.

The Board generally agrees with the HWP that the "complete slate" and "same name" requirements, as interpreted by the Illinois Supreme Court, impermissibly infringed on the candidates' constitutional rights. See. Bf. of Board in No. 90-1435. In effect, the Illinois "complete slate" statute requires a candidate running for one office to submit the signatures necessary for ballot access for every office in that jurisdiction. In practice, this required the individual HWP candidates running for offices for which only 25,000 signatures were needed to actually submit the two separate groups of 25,000 required of the party ticket in each of the two Cook County board districts, totalling 50,000 signatures.

Because such piggy-backing resulted in the individual candidates needing more signatures than would statewide candidates, and thus run afoul of the doctrine set forth in *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 99 S.Ct. 983, 50 L.Ed.2d 230 (1979), the Electoral Board interpreted the "complete slate" requirement broadly so as not to disqualify the entire party ticket because one portion of that ticket itself did not have sufficient signatures. Thus, the Board did not disqualify the suburban candidates because of the inadequacies of their running mates. However, the suburban candidates' failure to submit the statutory minimum number of signatures for their individual candidacies left

the Board no alternative but to disqualify them, and only them, for that reason.

Socialist Workers stands for the general proposition that no candidate running in a smaller jurisdiction need submit a greater number of signatures than those required of similar candidates running in a larger jurisdiction. It does not require precise mathematical proportionality of signature requirements nor does it prohibit a State from adopting a "cap" which no signature requirement may exceed. *See, e.g., Bowe v. Board of Election Commissioners*, 614 F.2d 1147, 1150 (7th Cir. 1980); *Fuller v. Kusper*, 141 Ill.App.3d 1074, 491 N.E.2d 87 (1986).

The suburban candidates needed no more signatures than those which would have been required of any other new candidate running in any jurisdiction. Thus, this case does not present an illogical statutory anomaly such as that struck down in *Socialist Workers*.

B. ILLINOIS FLAT 25,000 SIGNATURE REQUIREMENT FOR NEW PARTY CANDIDATES RUNNING IN LARGE JURISDICTIONS IS FAR MORE PERMISSIVE THAN SIMILAR REQUIREMENTS UPHELD BY THIS COURT.

The 25,000 signature requirement for suburban Cook County commissioner candidates is, in large part, a result of the decision of this Court in *Illinois State Board of Elections v. Socialist Workers Party*, in which this Court found that Illinois' requirement that a candidate running only in Chicago must obtain more signatures than a statewide candidate violated the constitutional guarantee of equal protection. The legislature subsequently amended

section 10-2 of the Election Code[3] to provide a uniform 25,000 signature "cap".

Most third-party candidates for county office in Illinois simply need to submit signatures numbering at least 5% of the vote cast in the applicable jurisdiction at the last election at which county officers were elected.[4] This formula results in a numerical signature requirement far less than 25,000 signatures in all but the largest voting jurisdictions in Cook County.[5] In the three large Cook County jurisdictions, use of the percentage formula results in a signature requirement somewhat higher than the 25,000 statewide cap.[6]

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[3] Ill.Ann.Stat. ch. 46, ¶ 10-2 (Smith-Hurd 1991 Supp.)

[4] Ill.Ann.Stat. (1989) ch. 46, ¶ 10-2 (Smith-Hurd 1991 Supp.). Under the Illinois consolidated election calendar, the base year used to compute signature requirements for county elections is always the general election held in November two years earlier. Ill.Ann.Stat. ch. 46, ¶ 2A-1.1 (Smith-Hurd 1991 Supp.). Thus, the base year for new party signature requirements for the November, 1990 election was the November, 1988 election.

[5] In Illinois' second most-populous county, DuPage County, third-party countywide candidates for the 1990 election need only have submitted 15,991 signatures. Official Vote Cast at the General Election, November, 1988, Illinois State Board of Elections.

[6] If the pre-*Socialist Workers* uncapped percentage formula were used for Cook County candidates for the 1990 election, the candidates for countywide office would have needed 104,799 signatures, the Chicago-only candidates, 55,704, and suburban-only candidates, 49,095. Official Vote Cast at the General Election, November, 1988, Illinois State Board of Elections.

This Court has considered whether numerical signature requirements are so onerous as to violate the candidates' constitutional rights. In *Jenness v. Fortson*, 403 U.S. 431, 91 S.Ct. 1970, 29 L.Ed.2d 554 (1971), this Court upheld a signature requirement of 5% of the total registered electorate. Here, in contrast, Illinois merely requires a maximum of 5% of the votes cast at the last county election. By taking advantage of the 25,000 "cap", the HWP candidates could obtain ballot access with support from as little as 2.1% of the total registered electorate.[7]

The Chicago and suburban county board districts are discrete and separate. Because each of these two districts is sufficiently large to invoke the 25,000 cap, a party wishing to run candidates for all 17 commissionerships must indeed submit a total of 50,000 signatures. However, by using a "slate petition", a combination of these signatures may also be used to support the countywide ticket.

This signature requirement, however, does not share the flaws which doomed the statute considered in *Socialist Workers*. Instead of illogically requiring candidates who run in a smaller area to obtain more signatures than those running in a larger area, the Illinois statutory scheme now establishes a hierarchy of increasing percentage-based signature requirements for new party county

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[7] In 1990, approximately 1,200,000 persons were registered to voters in suburban Cook County. Under the five percent standard approved in *Jenness*, new party candidates would need 60,000 signatures. The total vote cast at the November, 1990 General Election in suburban Cook County was 654,229. Official Canvass of Results of the November, 1990, General Election, Cook County Canvassing Board.

candidates, which peaks at a cap of 25,000 signatures. This formula does not affect similarly situated candidates in an illogical fashion nor does it unduly burden candidates. The uniform cap eases the administration of election laws and recognizes that a percentage-based formula often resulted in colossal requirements in populous voting jurisdictions. These requirements can be so high that they exceed the level which can be easily obtained by a new party, even one which could draw upon the vast population base of Cook County.

The Court of Appeals for the Eighth Circuit has upheld a "flat figure" requirement similar to Illinois'. In *McLain v. Meier*, 851 F.2d 1045 (8th Cir. 1988), the court upheld a 7,000 signature requirement for North Dakota statewide offices, noting that the State had "important interests in protecting the integrity of [its] political processes from frivolous or fraudulent candidacies, in ensuring that [its] election processes are efficient, in avoiding voter confusion and caused by an overcrowded ballot, and in avoiding the expense and burden of run-off elections." *Id.* at 851 F.2d 1050, *quoting Clements v. Fashing*, 457 U.S. 957, 965, 102 S.Ct. 2836, 2844-45, 73 L.Ed.2d 508 (1982).[8]

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[8] The signature requirement upheld in *McCain* compares favorably to the Illinois requirement for suburban commissioners:

Jurisdiction Population	Requirement	1980 Population	Requirement as % of Total
North Dakota	7,000	652,717	1.07%
Suburban Cook County	25,000	2,248,129	1.11%

See also Hall v. Simcox, 766 F.2d 1171, 1176 (7th Cir. 1985) "Thirty-five thousand signatures in a state of millions of registered voters are not a lot to get[.]"

In effect, Illinois has said that any candidate who can garner the support of 25,000 of its citizens can obtain ballot placement in his voting jurisdiction, no matter how large that jurisdiction may be. This Court need not disturb the sound legislative judgment evidenced by this simple requirement.

C. THE RECORD DOES NOT DEMONSTRATE THAT ILLINOIS' NUMERICAL SIGNATURE REQUIREMENT IS UNDULY BURDENSOME.

In its brief, the HWP argues that its 7,800 suburban signatures "overwhelmingly established" the party's seriousness in the suburban area and was sufficient to demonstrate a "modicum of support" in that jurisdiction. HWP Bf. at 26-27. HWP also claims that the Board did not challenge the HWP's assertion. However, the Board specifically noted:

> The Board finds that the 25,000 signature requirement for suburban candidates is appropriate, since there are over 1,000,000 voters in suburban Cook County, and since the HWP candidates were not tested in a primary election. [footnote omitted.] The fact that 44,000 signatures were collected in Chicago, which only has slightly more voters than suburban Cook, supports the Board's position that the 25,000 suburban requirement would be attainable if the HWP had a modicum of support in that jurisdiction, a fact which the HWP has not shown. [footnote: Further, the Electoral Board has no statutory authority to alter or vary from the minimum signature requirement as set forth in the Election Code. The question of what is a minimum showing of support (if 25,000 is too much) reposes in a court of competent jurisdiction.]

Pet. Cert. in No. 90-1435 at 47a. The record is devoid of evidence even hinting that the 25,000 signature requirement for suburban candidates was unduly burdensome. The HWP's argument on the point is limited to a vague assertion that 25,000 signatures should be sufficient to place all the party's candidates on the ballot no matter how many candidates it fielded or in how many jurisdictions it chose to run them. In its haste to dismantle this reasonable statutory requirement, HWP does not suggest, for instance, how signatures from one jurisdiction could be used to demonstrate support for candidates running in other jurisdictions. Illinois, of course, may demand that the HWP show support in the precise jurisdictions in which the candidates are running. In essence, the HWP is asking to transfer its Chicago signatures (whose signers did not petition to nominate the suburban candidates) to support the other portions of the ticket. See Pet. Cert. in No. 90-1435 at 46a.

The HWP requests that this Court rewrite the Illinois Election Code and legislate new signature requirements for certain offices. On this record, such a task is impossible. Candidates mounting a serious attack to a statutory signature requirement as unduly burdensome must develop a strong factual record demonstrating the frustration experienced by candidates attempting to meet the standard. *Storer v. Brown*, 415 U.S. 724, 740 (1976); *Berglund v. Harris*, 767 F.2d 1551, 1554 (11th Cir. 1985). In *Munro v. Socialist Workers*, 479 U.S. 189, 107 S.Ct. 533, 93 L.Ed.2d 499 (1986), this Court recognized that unfocused attacks such as HWP's lead to "endless court battles" over whether the States' requirements actually are sufficient to justify their ends. *Id.* 479 U.S. at 195, 107 S.Ct. at

537. The *Munro* court further held that the State's choice of a signature requirement need only be "reasonable and * * * not impinge on constitutionally-protected rights". *Id.*

The support already demonstrated by the HWP in the suburban area is hardly awe-inspiring. Assuming every signature on the suburban sheets is valid, the 7,800 submitted is only about 0.65% of the total electorate and 0.79% of the suburban vote cast at the 1988 county election.

Additionally, the party's countywide candidates did not demonstrate suburban support at the November, 1990 election. Only two of the party's nine candidates even

surpassed the low 5% threshold in the suburbs which Illinois requires to obtain "established party" status.[9]

Assuming, as HWP asserts, that it largely draws its support from disenchanted Democrats, the results in the suburban commissioner race also demonstrate that an HWP presence on the ballot would not have affected the results. In the heavily Republican Cook County suburbs, six Republicans and one Democrat won for county commissioner. The lone successful Democrat was Richard J. Phelan, the party's candidate for President of the County Board. Mr. Phelan finished fourth, in the middle of the pack of Republicans, a full 41,573 votes ahead of his

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[9] The results of the November, 1990 Election in the suburbs for the HWP candidates were:

Office	Total Vote	Percent of Total Vote
State's Attorney	22,733	3.6%
Clerk	20,789	3.4%
Treasurer	28,068	4.7%
Sheriff	47,058	7.5%
Assessor	23,248	3.8%
Supt. of Educational Service Region	38,362	6.7%
Board of Appeals (two candidates)	23,288	
	24,567	4.3% combined
President	29,854	4.8%

Of the 654,229 ballots cast, 86,522 were "straight party" Democratic votes, 64,501 were straight Republican and only 4,989 were straight Harold Washington party votes. Official Canvass of Returns, Cook County Canvassing Board, November, 1990 General Election.

nearest Democratic running-mate.[10] This margin is significantly greater than the total suburban vote achieved by all but one the HWP countywide candidates.

The HWP petitioned this Court for a stay of the Illinois Supreme Court order to permit the suburban candidates to run in November, 1990 election. This Court granted that petition, but to the limited extent that the decision of the Electoral Board was reinstated. J.A. 118. As the Board's decision excluded the suburban candidates, they were not included on the ballot prepared in response to the stay order. This Court correctly reinstated the HWP candidates who did demonstrate support in their jurisdictions: the countywide and Chicago – only candidates.

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[10] The complete results of the race for suburban Cook County commissioner were:

Mary M. McDonald (R)	326,865	8.7%
Aldo A. DeAngelis (R)	314,466	8.4%
Carl R. Hansen (R)	313,917	8.4%
Richard J. Phelan (D)	298,067	8.0%
Richard A. Siebel (R)	294,886	7.9%
Herbert Schumann (R)	273,368	7.3%
Allan Carr (R)	268,823	7.2%
Patricia McLaughlin (D)	256,494	6.8%
Angelo Saviano (R)	252,373	6.7%
Sheila Schultz (D)	246,986	6.6%
Pat Capuzzi (D)	233,521	6.2%
Thomas O'Donnell (D)	225,171	6.0%
Erwin Kozicki (D)	210,196	5.6%
Edward Reinfranck (D)	209,290	5.6%

Official Canvass of Returns, Cook County Canvassing Board, November, 1990 General Election.

CONCLUSION

The judgment of the Supreme Court of Illinois should be affirmed in part and reversed in part by fully reinstating the decision of the Cook County Officers Electoral Board.

Respectfully submitted,

JACK O'MALLEY
State's Attorney of
Cook County, Illinois

BURTON S. ODELSON
(Counsel of Record)
Special Assistant State's Attorney
of Cook County, Illinois
3318 West 95th Street
Evergreen Park, Illinois 60642
708/424-5678

Attorney for Respondents

MATHIAS W. DELORT
Odelson & Sterk, Ltd.
3318 West 95th Street
Evergreen Park, Illinois 60642

Of Counsel

Date: August 7, 1991